

The Part 40 filing form itself was discussed by the witness (Tr. 337, 338).

The policy that any UMWA international representative has an automatic entry right under § 103(f) emanated from Barton's office when Part 40 was promulgated (Tr. 338, 339). The Part 40 filings are occasionally consulted by MSHA since the regulations govern the identification of representatives of miners for all mines under the Act (Tr. 340). Further, the regulations define the term "representatives of miners" (Tr. 341).

Barton analyzed a procedure to be followed if conflicting claims arise between different persons claiming to be representatives of miners (Tr. 354, 355).

In rebuttal Forrest Adison and Mark Larsen testified for the UMWA.

Forest Adison has been employed at the Wilberg mine for eight years. His local union offices include safety committeeman and mine committeeman (Tr. 360). Adison was present at a meeting with mine management representatives Neldon Sitterud, Jorgenson (shift foreman), John Boylen, and Baker (MSHA) at the Wilberg mine on March 5. At that time Adison requested that international representative Tom Rabbitt accompany him on a regular quarterly safety inspection conducted by Bob Baker. There was a question of a variance involving an escapeway in the Wilberg mine (Tr. 361, 366). Sitterud told Rabbitt he had no right to enter the mine. He and Boylen were not aware of the Act. Baker took no enforcement action when the company refused to allow Rabbitt to walkaround. Adison considered Rabbitt to be his representative protecting him and keeping the membership aware of activities (Tr. 362-367). Since the mine disaster he has asked the international union representatives about matters within their expertise (Tr. 364).

Mark S. Larsen, a safety committeeman for the two years, has been employed at the Deer Creek mine for seven years (Tr. 368, 369, 373).

On April 15, 1986 Larsen was present to accompany the MSHA inspector whom he met at the gate. The two men picked up Rabbitt. Later, in his office, White questioned Rabbitt's authority to enter the mine under the contract. Rabbitt stated his entry was not under the contract but under § 103(f) of the Act (Tr. 369, 370). When he read the Act, White said Rabbitt was not an employee. Rabbitt agreed but stated that he would suffer no lost wages by accompanying the inspector (Tr. 370). Larsen indicated Rabbitt was being paid in part by the local union dues of \$40 per month (Tr. 370, 371).

As the argument continued Larsen told White that he felt Rabbitt was his representative (Tr. 371). The MSHA citation, as previously described, was issued (Tr. 371). At this meeting Rabbitt did not state he could get into the mine at any time (Tr. 372).